



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

RIN 0648-BK68

Fisheries of the Northeastern United States; Amendment 21 to the Atlantic Sea Scallop Fishery Management Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Announcement of availability of amendment; request for comments.

SUMMARY: NMFS announces that the New England Fishery Management Council has submitted Amendment 21 to the Atlantic Sea Scallop Fishery Management Plan, incorporating the Environmental Assessment and the Regulatory Flexibility Analysis, for review by the Secretary of Commerce, and is requesting comments from the public. This action would allow for more controlled access to the scallop resource by the limited access and limited access general category fleets and increase monitoring to support a growing directed scallop fishery in Federal waters, including the Northern Gulf of Maine Management Area. These proposed management measures are intended to promote conservation of the scallop resource in the Northern Gulf of Maine Management Area and to manage total removals from the area by all fishery components. Amendment 21 would also expand flexibility in the limited access general category individual fishing quota fishery to reduce impacts of potential decreases in ex-vessel price and increases in operating costs.

DATES: Comments must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**].

ADDRESSES: The Council has prepared a draft Environmental Assessment (EA) for

this action that describes the proposed measures in Amendment 21 to the Atlantic Sea Scallop Fishery Management Plan (FMP) and other considered alternatives and analyzes the impacts of the proposed measures and alternatives. The Council submitted a draft of the amendment to NMFS that includes the draft EA, a description of the Council's preferred alternatives, the Council's rationale for selecting each alternative, and a Regulatory Impact Review (RIR). Copies of supporting documents used by the Council, including the EA and RIR, are available from: Thomas A. Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950 and accessible via the internet in documents available at:

<https://www.nefmc.org/library/amendment-21>.

You may submit comments, identified by NOAA-NMFS-2021-0065, by:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov* and enter NOAA-NMFS-2021-0065 in the Search box. Click the "Comment" icon, complete the required fields, and enter or attach your comments.

Instructions: Comments sent by any other method or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.*, name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Travis Ford, Fishery Policy Analyst, (978) 281-9233.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act requires that each Regional Fishery Management Council submit

any amendment it prepares to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an amendment, immediately publish notification in the **Federal Register** that the amendment is available for public review and comment. The Council submitted its final version of Amendment 21 to the Atlantic Sea Scallop FMP to NMFS for review on August 13, 2021. NMFS has declared a transmittal date of August 30, 2021. The Council has reviewed the Amendment 21 proposed rule regulations as drafted by NMFS and deemed them to be necessary and appropriate as specified in section 303(c) of the Magnuson-Stevens Act.

Background

The Atlantic sea scallop fishery is prosecuted along the East Coast from Maine to Virginia, although most fishing activity takes place between Massachusetts and New Jersey. Management measures were first adopted in 1982, but there have been several major revisions to the management program over the following decades.

Development of the Limited Access General Category (LAGC) Fishery

The Council established the general category component as an open access permit category in 1994 while developing a limited access program for qualifying vessels (now the limited access component). Through Amendment 11 to the Scallop FMP (73 FR 20090; April 14, 2008), the Council transitioned the general category component from open access to limited access to limit fishing mortality and control fleet capacity. The Council's vision for the LAGC component was a fleet made up of relatively small vessels, with possession limits to maintain the historical character of this fleet and provide opportunities to various participants, including vessels from smaller coastal communities. Amendment 11 established three LAGC permit categories, which allowed for continued participation in the general category fishery at varying levels. Vessels that met a qualifying criteria were issued an LAGC individual fishing quota (IFQ) permit and

allocated quota based on the ‘contribution factor’ (*i.e.* if you fished longer and landed more during the qualification period, you received a higher allocation). General category permit holders that did not meet the qualifying criteria for an LAGC IFQ permit were eligible to receive either an LAGC Northern Gulf of Maine (NGOM) permit or LAGC incidental permit. Limited access vessels that fished under general category rules and qualified under the same IFQ qualification criteria were issued LAGC IFQ permits and allocated a portion of (0.5 percent) of the total scallop allocation. Unlike vessels with only LAGC IFQ permits, limited access vessels that also qualified for an LAGC IFQ permit were not allowed to transfer quota to or from other vessels.

NGOM Management Area

The Council also established the NGOM Management Area and permit category through Amendment 11. The area was developed to enable continued fishing and address concerns related to conservation, administrative burden, and enforceability of scallop fishing within the Gulf of Maine. Amendment 11 authorized vessels with either an LAGC NGOM permit or LAGC IFQ permit to fish within the NGOM Management Area at a 200 lb per day (91 kg per day) trip limit until the annual total allowable catch (TAC) for the area is caught. The Council did not recommend restrictions on limited access vessels fishing in the NGOM because the improved management and abundance of scallops in the major resource areas on Georges Bank and in the Mid-Atlantic region made access to Gulf of Maine scallops less important for the limited access boats and general category boats from other regions. From 2008 through 2017, limited access vessels were able to operate in the NGOM management area under days-at-sea (DAS) management as long as the LAGC TAC had not been caught. The initial measures were intended to allow directed scallop fishing in the NGOM, and the Council envisioned that management of this area would be reconsidered if the scallop population and fishery in the NGOM grew in the future.

From 2009–2015 the NGOM TAC of 70,000 lb (31,751 kg) was not caught, and the fishery remained open for the entire year. In fishing years 2016 and 2017, there was a notable increase in effort in the NGOM management area by both LAGC and limited access vessels fishing the large year class of scallops on Stellwagen Bank, located mostly within the NGOM. Monitoring removals by the limited access component in the NGOM was challenging because vessels could fish both inside and outside NGOM management area while fishing DAS on the same trip.

In response to the increase in effort and landings in the NGOM area in 2016 and 2017, the Council developed the following problem statement for the Federal scallop fishery in the NGOM management area: Recent high landings and unknown biomass in the NGOM Scallop Management Area underscore the critical need to initiate surveys and develop additional tools to better manage the area and fully understand total removals.

Recent actions have developed measures that allow managers to track fishing effort and landings by all components from the NGOM management area. The NGOM TAC is now based on recent survey information, with separate TACs for the limited access and LAGC components. These measures were intended to be a short-term solution to allow controlled fishing in the NGOM management area until a future action (this action) could be developed to address NGOM issues more holistically.

LAGC IFQ Possession Limits

The initial general category possession limit was set at 400 lb (181 kg) per trip through Amendment 4 (59 FR 2757; January 19, 1994). In 2007, Amendment 11 maintained the general category possession limit of 400 lb (181 kg) for qualifying IFQ vessels. Amendment 15 (76 FR 43746; July 21, 2011) increased the LAGC IFQ possession limit to 600 lb (272 kg) following concerns from industry members that the 400-lb (181-kg) possession limit was not economically feasible due to increased operating costs. The 200-lb (91-kg) trip limit increase was not expected to change the

nature of the “day boat” fishery and would keep the LAGC IFQ component consistent with the vision statement laid out by the Council in Amendment 11. The Council recently completed a program review of the LAGC IFQ fishery and analyzed the impacts of changes to IFQ trip limits. This review found that increasing the possession limit for IFQ trips would increase flexibility in fishing decisions, which could improve safety. Further, a higher possession limit would provide increased fishing revenue and vessel profit. The results of the program review are summarized in the Amendment 21 scoping document, which can be found at this website:

<https://www.nefmc.org/library/amendment-21>.

Quota Transfers by Limited Access/LAGC IFQ Vessels

Amendment 15 allowed LAGC IFQ permit holders to permanently transfer some or all of their quota allocation to another LAGC IFQ permit holder while retaining the permit itself. During development of Amendment 15, the Council considered an option that would have included limited access permit holders that also have LAGC IFQ permits (combo vessels) in this allowance; however, the Council opted against this option because it would change the overall 5-percent and 0.5-percent allocations specified in Amendment 11. For example, the 5-percent allocation would be expected to increase if a combo vessel permanently transferred quota to an LAGC IFQ-only vessel and, therefore, would have implications on quota accumulation caps that apply to LAGC IFQ-only permit holders (*i.e.* 5-percent maximum for owners, 2.5-percent maximum for individual vessels).

The Council initiated Amendment 21 to consider adjusting the management of the NGOM to allow for more controlled access by the limited access and LAGC components, to increase monitoring to support a growing directed scallop fishery in Federal waters, and to consider adjusting the LAGC IFQ program to support overall economic performance while allowing for continued participation in the general category fishery at

varying levels. To address these issues the Council approved Amendment 21 at its September 2020 meeting. Amendment 21 would:

- Change the Annual Catch Limit flow chart to account for biomass in the NGOM as part of the Overfishing Limit and the Acceptable Biological Catch to be consistent with other portions of scallop resource management;
- Develop landing limits for all permit categories in the NGOM and establish an 800,000-lb (362,874 kg) NGOM Set-Aside trigger for the NGOM directed fishery, with a sharing agreement for access by all permit categories for allocation above the trigger. Allocation above the trigger would be split 5 percent for the NGOM fleet and 95 percent for limited access and LAGC IFQ fleets;
- Expand the scallop observer program to monitor directed scallop fishing in the NGOM by using a portion of the NGOM allocation to off-set monitoring costs;
- Allocate 25,000 lb (11,340 kg) of the NGOM allocation to increase the overall Scallop Research Set-Aside (RSA) and support Scallop RSA compensation fishing;
- Increase the LAGC IFQ possession limit to 800 lb (363 kg) per trip only for access area trips;
- Prorate the daily observer compensation rate in 12-hour increments for observed LAGC IFQ trips longer than 1 day; and
- Allow for temporary transfers of IFQ from limited access vessels with IFQ to LAGC IFQ-only vessels.

The Magnuson-Stevens Act allows us to approve, partially approve, or disapprove measures recommended by the Council in an amendment based on whether the measures are consistent with the FMPs, plan amendment, the Magnuson-Stevens Act and its National Standards, and other applicable law. The Council develops policy for its fisheries and we defer to the Council on policy decisions unless those policies are

inconsistent with the Magnuson-Steven Act or other applicable law. As such, we are seeking comment on whether measures in Amendment 21 are consistent with the FMP, the Magnuson-Stevens Act and its National Standards, and other applicable law.

Through this notice, NMFS seeks comments on Amendment 21 and its incorporated documents through the end of the comment period stated in the **DATES** section of this notice of availability (NOA). Following the publication of this NOA a rule proposing the implementation of measures in this amendment is anticipated to be published in the **Federal Register** for public comment. Public comments must be received by the end of the comment period provided in this NOA of Amendment 21 to be considered in the approval/disapproval decision. All comments received by the end of the comment period on the NOA, whether specifically directed to the NOA or the proposed rule, will be considered in the approval/disapproval decision. Comments received after the end of the comment period for the NOA will not be considered in the approval/disapproval decision of Amendment 21.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 2, 2021.

Jennifer M. Wallace,
Acting Director, Office of Sustainable Fisheries,
National Marine Fisheries Service.